

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

**11005.0263-00**

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on \_\_\_\_\_

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Application Number

**10/594,646**

Filed

**September 27, 2006**

First Named Inventor

**Hai ZHANG**

Art Unit

**2617**

Examiner

**Ngo, Chuong A.**

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

☒ attorney or agent of record.

Registration number **46,340**

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_



Signature

**Philip J. Hoffmann**

Typed or printed name

**202-408-4000**

Telephone number

**October 19, 2010**

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

\*Total of 1 forms are submitted.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
	)	
Hai ZHANG	)	
	)	Group Art Unit: 2617
Application No.: 10/594,646	)	
	)	Examiner: Ngo, Chuong A.
Filed: September 27, 2006	)	
	)	
For: METHOD FOR ACTIVATING	)	
MULTIMEDIA	)	Confirmation No.: 1623
BROADCAST/MULTICAST	)	
SERVICE	)	

**Mail Stop AF**  
Commissioner for Patents  
P.O. Box 1450  
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Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicant requests a pre-appeal brief review of the Final Office Action mailed July 19, 2010, the period for response to which extends through October 19, 2010. This Request is being filed concurrently with a Notice of Appeal.

Applicant has met each of the requirements for a pre-appeal brief review of the rejections set forth in the Final Office Action mailed July 19, 2010. The application has been at least twice rejected. Applicant has filed a Notice of Appeal with this Request, and have not yet filed an Appeal Brief. Lastly, Applicant submits a Pre-Appeal Brief Request for Review that is five (5) or less pages in length and sets forth legal or factual deficiencies in the rejections. *See* Official Gazette Notice, July 12, 2005. Therefore, Applicant requests review of the Examiner's rejections in the Final Office Action for the following reasons.

### **REMARKS**

Claims 1, 3-6, 8-17, and 20-25 are pending and under consideration. In the Final Office Action mailed July 19, 2010 (“FOA”), the Examiner rejected claims 1 and 23-25 under 35 U.S.C § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0147266 A1 to Hwang et al. (“*Hwang*”) and U.S. Application Publication No. 2004/0073928 A1 to Alakoski et al. (“*Alakoski*”); rejected claims 3-6, 9-12, 14-17, 21, and 22 under 35 U.S.C § 103(a) as being unpatentable over *Hwang*, *Alakoski*, and U.S. Patent Application Publication No. 2004/0266440 A1 to Fuchs et al. (“*Fuchs*”); and objected to claims 8, 13, and 20 as depending from a rejected claim but allowable if rewritten in independent form. In the Advisory Action mailed October 1, 2010 (“AA”), the Examiner maintained the rejections and objection included in the FOA.

#### **Rejections of Claims 1, 3-6, 9-12, 14-17, and 21-25 under 35 U.S.C. § 103(a)**

Applicant respectfully traverses the rejections of claims 1, 3-6, 9-12, 14-17, and 21-25 under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established.

Independent claim 1 recites “verifying, by the SGSN **before sending a Create MBMS Context Request**, whether **the MBMS bearer capabilities of the UE are less than Required MBMS Bearer Capabilities if the SGSN has the Required MBMS Bearer Capabilities**” (emphasis added). The Examiner alleges that paragraphs [0009], [0040], [0050], [0051], [0065], and [0069] of *Hwang* disclose this feature of claim 1. (FOA, pgs. 6 and 7; AA, pg. 2). This, however, is not correct.

As recited in claim 1, a method is provided according to all limitations, including steps a1, a2, b and c, and these limitations could not be divided into independent parts. For example, the verification performed by the SGSN in step b **is the basis of step c** in claim 1, such that SGSN either (i) rejects the request for activating an MBMS Context, or (ii) creates the MBMS UE Context, depending on the result of the verification. Particularly, the claim recites the verification is performed **according to a comparison between** the MBMS bearer capabilities of the UE and Required MBMS Bearer Capabilities of the SGSN.

The FOA alleges that paragraph [0050] of *Hwang* discloses verifying the capability of the SGSN. (FOA, pg. 6). In contrast, paragraph [0050] of *Hwang* discloses that SGSN 440 determines whether the UE has the **capability and is qualified for receiving the MBMS service**. In *Hwang*, “the SGSN 440 [makes a determination] . . . **depending on the initial UE identity** included in the received Authentication request message. For example, the SGSN 440 can determine **whether the UE 410 has subscribed for the MBMS service**.” (Emphasis added, paragraph [0050]). Thus, SGSN

440 of *Hwang* performs the determination depending on the initial UE identify, but does not, for example, perform a verification based on a comparison between “the MBMS bearer capabilities of the UE” and the “Required MBMS Bearer Capabilities,” as recited in claim 1.

Further, the FOA and AA allege that paragraphs [0009], [0040], [0051], [0065] and [0069] of *Hwang* disclose that SGSN 440 of *Hwang* verifies radio access bearer capability. *See*, for example, AA, pg. 2. Such an interpretation, however, is not correct. Paragraph [0009] of *Hwang* discloses that BM-SC 106 “performs authentication on the contents provider 109, quality decision on an MBMS service, error correction for an MBMS data loss, and accounting,” and paragraph [0040] discloses that the TRNC 330 transmits radio bearer (RB) information needed when the TRNC 330 provides the MBMS service, to the UE 310. There is no disclosure in paragraphs [0009] or [0040] of *Hwang* of using SGSN 440 to perform the claimed “verifying.”

Paragraph [0069] of *Hwang* discloses that SGSN 440 transmits an MBMS RAB setup request message to the TRNC 430 in order to set up a radio access bearer (RAB). Next, the TRNC 430 sets up an MBMS RAB to the SGSN 440, and then transmits an MBMS RAB setup response message to the SGSN 440. Thus, SGSN 440 of *Hwang* **only** transmits an MBMS RAB setup request message and requests the TRNC to set up a RAB. SGSN 440 of *Hwang*, however, does not perform any verification, and further does not perform a verification based on whether “the MBMS bearer capabilities of the UE are less than Required MBMS Bearer Capabilities,” as recited in claim 1.

In paragraphs [0051] to [0065] of *Hwang*, SGSN 440 transmits an authentication confirm message to TRNC 430 along with information indicating whether UE 410 has qualification for receiving the MBMS service and information on the types of the MBMS services that the UE 410 is currently receiving (Step 417). Next, TRNC 430 determines whether it can continuously provide the requested MBMS service to the UE 410 (Step 517). At most, TRNC 430 of *Hwang* **determines** whether it can continuously provide the requested MBMS service to UE 410 **according to the indication of whether UE 410 has qualification from the SGSN 440**. Such a determination, however, does not constitute the claimed “verifying” at least because there is no disclosure in *Hwang* of performing any **verification or determination** based on whether “the MBMS bearer capabilities of the UE are less than Required MBMS Bearer Capabilities,” as recited in claim 1. There is simply no disclosure in *Hwang* of, for example, performing a verification based on MBMS bearer capabilities as a prerequisite to determining whether UE 310 is qualified to receive MBMS service. Moreover, there is no disclosure in *Hwang* of “**verifying**, by the SGSN **before** sending a

Create MBMS Context Request, whether the MBMS bearer capabilities of the UE are less than Required MBMS Bearer Capabilities if the SGSN has the Required MBMS Bearer Capabilities,” (emphasis added) as recited in claim 1.

Independent claim 1 further recites “rejecting, by the SGSN, the request for activating an MBMS Context if the MBMS bearer capabilities of the UE are less than the Required MBMS Bearer Capabilities, or creating the MBMS UE Context if the MBMS bearer capabilities of the UE are not less than the Required MBMS Bearer Capabilities,” (emphasis added). *Hwang* also does not teach or suggest these features of claim 1. Page 7 of the FOA alleges that paragraphs [0029] and [0032] disclose this feature of claim 1. This, however, is not correct, at least because paragraphs [0029] and [0032] merely disclose brief descriptions of Figures 6, 9A, and 9B of *Hwang*, but do not disclose the claimed features.

At most and in relevant part, *Hwang* discloses “[u]pon receiving the Authentication confirm message, the TRNC 430 . . . transmits an RRC connection reject message to UE 410 along with MBMS Service ID indicating a type of the MBMS service that the UE 410 will receive and RB information necessary for the MBMS service . . . (Step 419),” and “when authentication for the UE 410 has failed, **the TRNC 430 transmits to the UE 410 an RRC connection reject message** including information indicating that the UE 410 is unqualified to receive the MBMS service, notifying that continuous supply of the MBMS service is unavailable.” (Emphasis added, paragraphs [0051] and [0066]). Thus, *Hwang* discloses that TRNC 430 notifies of an impossibility of a continuous supply of the MBMS currently being received by UE 410. Such a disclosure, however, does not constitute the claimed “**rejecting**” at least because in *Hwang* the RRC connection reject message is transmitted by TRNC 430 rather than “by the SGSN,” as recited in claim 1.

Furthermore, the claimed SGSN rejects the request for activating an MBMS Context or creates the MBMS UE Context “**based on** the result of the verification performed by the SGSN,” (emphasis added) as recited in claim 1. In contrast, TRNC 430 of *Hwang* transmits the RRC connection reject message to the UE 410 based on the UE 410 having no qualification for receiving the MBMS service.

Moreover, *Alakoski* and *Fuchs* fail to overcome any of the above discussed deficiencies of *Hwang*. For example, paragraphs [0005] to [0008] of *Alakoski* disclose that user equipment (UE) sends an IGMP Join message to GPRS Service Node (GGSN) to indicate its wish to join to a multicast service and paragraphs [0027] to [0032] of *Alakoski* disclose that Broadcast/Multicast-

Service Center (BM-SC) stores the Quality of Service (QoS) information and authorizes a MBMS bearer based on the stored QoS information.

Such a disclosure, however, does not teach or suggest the above discussed features of claim 1. Thus, even if the teachings of *Hwang* are combined with the teachings of *Alakoski* or *Fuchs* such a combination would still not teach, suggest, or render obvious “verifying, by the SGSN before sending a Create MBMS Context Request, whether the MBMS bearer capabilities of the UE are less than Required MBMS Bearer Capabilities if the SGSN has the Required MBMS Bearer Capabilities” and “rejecting, by the SGSN, the request for activating an MBMS Context if the MBMS bearer capabilities of the UE are less than the Required MBMS Bearer Capabilities, or creating the MBMS UE Context if the MBMS bearer capabilities of the UE are not less than the Required MBMS Bearer Capabilities” as recited in claim 1.

Therefore, *Hwang*, *Alakoski* and *Fuchs*, taken alone or in combination, fail to disclose or suggest the subject matter of claim 1. Independent claim 23, while of different scope than claim 1, distinguishes over *Hwang*, *Alakoski* and *Fuchs*, for at least similar reasons as claim 1. The remaining claims are also allowable over *Hwang*, *Alakoski* and *Fuchs* at least due to their dependence from one claims 1 and 23.

Accordingly, the rejections of claims 1, 3-6, 9-12, 14-17, and 21-25 under 35 U.S.C. § 103(a) should be withdrawn.

In view of the foregoing, Applicant respectfully requests that the rejections be withdrawn and the claims allowed.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNN, L.L.P.

Dated: October 19, 2010

By: 

Philip J. Hoffmann  
Reg. No. 46,340